BAIL SLIP

The Appellant/Petitioner in Crl.R.C.No. 425/04 Viz Anandan, (Accused in CC.No. 2268/2002 dated 26.5.2000 on the file of the Chief Metropolitan Magistrate, Chennai was released on Bail as per order of this Court dated 6.3.204 made in Crl.M.P.No. 2735/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :06.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.425 of 2004

Anandan ..Petitioner/accused

vs.

State by Inspector of Police
Traffic Investigation
K4,Anna Nagar Police Station,
Chennai. ..Respondent/complainant

This Revision is filed against the Judgment dated 27.02.2004 passed by the First Additional Sessions Judge,Chennai in C.A.NO.169 of 2003 confirming the Judgment dated 26.5.2003 passed by the Chief Metropolitan Magistrate, Egmore, Chennai-8 in C.C.No.2268 of 2002.

For Petitioner : Mr.S.Ananthanarayanan

For Respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor

O R D E R

This revision has been preferred against the judgment in C.A.No.169 of 2003 on the file of the First Additional Sessions Judge, Chennai in which the learned Sessions Judge has confirmed the Judgment of the learned Chief Metropolitan Magistrate in C.C.No.2268 of 2002 wherein the accused, who is the revision petitioner herein, has been convicted and sentenced under Section 304 (A) of IPC to undergo one year RI and a fine of Rs.5000/- with default sentence and also convicted under Section 184 of the Motor Vehicles Act and a fine of Rs.500/- with default sentence.

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2. Taking cognizance of the offence, the learned Chief Metropolitan Magistrate has issued summons to the accused and on his appearance, copies under Section 207 of Cr.P.C were furnished to him and when the offence was explained to the accused, the accused pleaded not guilty.

3. Before the trial Court, P.Ws 1 to 8 were examined and Exs P1 to P12 were marked.

4. P.W.1 is the husband of the victim deceased. According to P.W.1, on the fateful day ie., on 17.9.2001 at about 9.00p.m., he along with his wife (deceased) crossed the road near Selvarangam Nursing Home, half way near the median and at that time, the accused was riding in his motor cycle bearing Registration No. TN-04-9389 from the northern side, rashly and negligently and dashed against his(P.W.1)wife, who had sustained injuries on her head and all over her body. He has identified the accused as the person, who was riding the ill fated motor cycle at the time of the occurrence. He had preferred Ex P1 complaint to the police. According to P.W.1, soon after the accident , his wife was admitted in the nearby Selvarangam Nursing Home ,but she was immediately removed to Apollo Hospital as per the advise of the doctor at Selvarangam Nursing Home and that without response to the treatment given at Apollo Hospital, she breathed her last on 19.9.2001.

4a. P.W.2 has corroborated the evidence of P.W.1 . Since in the cross examination, he has deposed that he has not seen the occurrence, he was treated as a hostile witness by the Additional Public Prosecutor. P.W.3 is the doctor, who had treated the victim at Apollo Hospital and has given Ex P2 wound certificate showing that the victim had sustained grievous injuries on the head and that she was referred to a Neuro Surgeon in the Apollo Hospital. P.W.4 is the doctor, who had conducted autopsy on the corpse of the victim. Ex P3 is the postmortem certificate. The Doctor has opined that due to the injuries, the victim has sustained in the head, she had died.

4b. P.W.5 is the doctor, who had treated the accused for the injuries, he had sustained in the accident due to skid of the motor cycle which involved in the accident. Ex P4 is the wound certificate issued to the accused . He has also examined the pillion rider of the motor cycle which involved in the accident by name Murthy, who had sustained injuries in the accident and issued Ex P5 wound certificate for the injuries, the said Murthy had sustained.

4c. P.W.6 is the Motor Vehicle Inspector, who has examined the motor cycle, which involved in the accident. He who had issued Ex P6 report which shows that the accident has not occurred due to any mechanical defects in the motor cycle which involved in the accident. P.W.7 has not supported the case of the prosecution. Hence he was treated as a hostile witness. P.W.8 is the Inspector of Police, who is in charge of K4, Police

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Station,would depose that First Information Report in the case was registered by Sivasankaravadivelu, the then Inspector of Police on the basis of the complaint Ex P1 and registered the case under Crime No.442 of 2001 under Sections 279,394 A of IPC. Ex P7 is the copy of the first Information report. Since Sivasankaravadivelu was ill,later P.W.8 the Inspector of Police, who is in charge of K4 Police Station has deposed on behalf of the said Sivasankaravadivelu that Ex P8 rough sketch was drawn by Sivasankaravadivelu. Ex P9 is the altered First Information Report dated 20.9.2001. Ex P10 is the death intimation received from the Apollo Hospital. The inquest was conducted by the then Inspector of Police Thiru Sivasankaravadivelu. Ex P11 is the inquest report. He has also examined the witnesses and recorded their statements. The accused was arrested by Sivasankaravadivelu on 1.10.2001 at his residence and notice under Ex P12 under Section 209 of Motor Vehicles Act was served on the accused. After completing the investigation, the then Inspector of Police has filed the charge sheet against the accused.

5. When incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has not examined any witness on his side.

6. After going through the evidence both oral and documentary, the learned trial Judge has come to a conclusion that the charge levelled against the accused under Section 304(A) of IPC and under Section 184 of Motor Vehicles Act has been proved and accordingly, the learned trial Judge has convicted and sentenced the accused to under go one year Rigorous imprisonment and imposed a fine of Rs.5000/- under Section 304(A) of IPC with default sentence and under Section 184 of the Motor Vehicles Act, imposed a fine of Rs.500/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused had preferred an appeal in C.A.No.169 of 2003 before the First Additional Sessions Judge, Chennai The learned first appellate Judge , after giving due deliberation to the submissions made by the counsel appearing for both sides, and after scanning the evidence adduced before the trial Court, has ultimately concurred with the findings of the trial Judge, thereby confirming the Judgment of the trial Court, which necessitated the accused to approach this Court by way of this revision.

7. Now the point for determination in this revision is whether the findings of the learned trial Judge in C.C.No.2268 of 2002 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai which was confirmed by the learned First Additional Sessions Judge ,Chennai in C.A.No.169 of 2003 is liable to be set aside for the reasons stated in the memorandum of revision?

8. Heard Mr.S.Ananathanarayanan, learned counsel for the revision petitioner and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and considered their respective submissions.

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9.The Point:

Mr.S.Ananthanarayanan, the learned counsel appearing for the revision petitioner would focus the attention of this Court to the evidence of P.W.8 in the cross examination, who would admit that the accident had occurred in the midst of the road, while the victim and P.W.1 were crossing the road where there is no zebra crossing and particularly at the place of occurrence ,there was a median to the height of 4 feet and that the victim was standing at the time of accident near the median, where there was no way to cross the road and that there is an iron fence to the height of 4 feet at the place of accident. A perusal of Ex P8 rough sketch will also go to show that there is no zebra crossing at the place of the accident where the victim as well as P.W.1 crossed the road. P.W.1 who is an eye witness to the occurrence would also admit in the cross examination that zebra crossing is about 40 feet away from the place where he and his wife the victim had crossed the road. So the learned counsel appearing for the revision petitioner would contend that the negligence on the part of the victim has been proved through the evidence of P.W1 as well P.W.8 and Ex P8 rough sketch to show the manner under which the accident had occurred.

10. The learned counsel appearing for the revision petitioner relying on a decision reported in Chandrasekar-v- State by Inspector of Police, Dharmapuri Police Station, Dharmapuri(1991 L.W.(cri) 232)
and contended that if the circumstances proclaimed clearly and unambiguously negligence of the victim then the accused cannot be held liable under Section 304(A) of IPC. The exact observation of the learned Judge of this Court in the above said dictum runs as follows:

> " In a number of decided cases, it has been held that as a rule, mere proof that an event had happened or an accident had occurred, the cause of which was unknown, was not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim clearly and unambiguously, the negligence of some body as the cause for the event or accident. It is only to such of these cases that the maxim res ipsa loquitor may apply, if the cause of the accident was unknown and no reasonable explanation as to the cause was forthcoming from the accused. Further the event or accident must be of a kind, which does not happen in the ordinary course of things, if those who have management and control, use due care. It may be in such cases that

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> the Court must be further satisfied that the event which caused the incident was within the control of the accused. The reason is not far to seek,for , he would be in a better position to explain as to how the accident had occurred."

The negligence on the part of the victim has been proved in this case through P.W.1 and P.W.8 and also under Ex P8 rough sketch to the fact that she has not crossed the road where there is zebra crossing for crossing the road by the pedestrian.

11. The learned Additional Public Prosecutor placed a dictum of this Court in Ponnusamy-v-The King(1950 Madras Weekly Notes(cri) 19) wherein it has been held by a learned Judge of this Court that the contributory negligence has no place in a criminal law. The facts of the said case is that the accused, a lorry driver who was driving a lorry bearing Registration No. M.S.P.3163 on the road between Tambaram and Vandalur with a load of furniture intended to be delivered to a school and while in the process of over taking three bullock carts heavily laden with hay, first swerved swiftly to the right and then quickly to the left, had dashed against the man aged 30 going along on the road in the opposite direction. It was contended on behalf of the accused that the victim at the time of the accident was under the influence of some intoxicant and was walking along tipsily and had invited the accident only due to his conduct. Only under such circumstances, it has been held by the learned Judge of this Court that the contributory negligence has no place in a criminal law. The admitted fact of the said case is that the victim was going along the road in the opposite direction to the direction the lorry was driven by the accused in that case and it has been proved that while over taking three bullock carts with a load of hay, the accused had swiftly swerve the vehicle to his left and right in a high speed had dashed against the victim who was proceeding along the road on the opposite directions. But that is not the case herein. Here, the victim was admittedly in the midst of the road near the median, where there is no zebra crossing provided for the public for crossing the road. The accused, according to P.W.1 with a pillion rider had skidded as per the evidence of the Motor Vehicle Inspector, had dashed against the victim. Both the accused as well as the pillion rider got injured in the accident and they were treated by P.W.5. Under such circumstances, it cannot be said that the accident had occurred only due to a rash and negligent act of the accused alone. If the victim would have crossed the road in the place intended for crossing, the accident would have been averted. But the fact remains that the accused had consumed liquor at the time, while driving the vehicle. As seen from the evidence of P.W.5, who had issued

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Ex P4. had examined the accused soon after the occurrence has stated in his evidence that in his examination, he could see the smell of alcohol in the mouth of the accused. But there is no cross examination on this aspect which lead inference that the accused had driven the vehicle only under the influence of arrack at the time of accident which warrants conviction under Section 184 of the Motor Vehicles Ac not under Section 304(A) of IPC. Under such circumstances, I am of the view that the accused is liable to be convicted and sentenced under Section 184 of the Motor Vehicles Act. The point is answered accordingly.

12. In fine, the revision is allowed in part and the conviction and sentence of the accused under Section 304(A) of IPC is set aside. But the conviction of the accused under Section 184 of the Motor Vehicles Act by the trial Court is confirmed by the first appellate Court is hereby confirmed and the sentence has been enhanced to a fine of Rs.2000/- instead of Rs.500/- in default to under go two months simple imprisonment.

13. The learned counsel appearing for the revision petitioner represents that the accused had already paid a fine amount of Rs.5000/- before the trial Court which can be awarded as compensation to the victim. Besides, the fine under Section 184 of the Motor Vehicles Act , the accused is directed to pay a compensation of Rs.5000/- to the legal representatives of the victim. The fine amount paid under Section 304(A) of IPC is to be withdrawn by the accused on a proper application and the same is to be paid to the Legal representatives of the victim towards compensation in the presence of the trial Court within a period of one month from the date of receipt of a copy of this order.

sg

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To,

1.The First Additional Sessions Judge, Chennai.
2. The Principal Sessions Judge, Chennai.
3. The Chief Metropolitan Magistrate, Egmore, Chennai
4. The Public Prosecutor, High Court, Madras.

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5. The Inspector of Police, Traffic Investigation,
K4, Anna Nagar, Police station, Chennai.

6. The Public Prosecutor, High Court, Chennai.
+ 2 ccs to Mr. A. Arasu, Ganesan, Advocate sR 40709
TEJ (co)
sg6/8/07

Crl.R.C.No.425 of 2004
06.07.2007

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